

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

CLAIMANTS: Lucille K. Meinecke; Arthur W.
Schmidt

CASE 41G-0540-R-2022
41G 95748-00

OBJECTORS: United States of America (USDA
Forest Service); United States of
America (Bureau of Land
Management)

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41G 95748-00 appeared in the 41G Preliminary Decree with following Department of Natural Resources and Conservation (DNRC) issue remark:

POINT OF DIVERSION NO. 1, CURRENTLY IN THE NENE OF SEC 6, T1S, R6W IS INCORRECT. THIS POINT OF DIVERSION APPEARS TO BE IN GOVT. LOT 2 IN THE NWNW OF SEC 6, T1S, R6W, SILVER BOW COUNTY.

2. Claim 41G 95748-00 received an Objection from the United States Forest Service and the United States Bureau of Land Management (the United States). The United States filed a Motion for a Show Cause Order on March 6, 2023. In the Motion the United States notes that the claimants did not appear at the scheduled status conference on November 9, 2022, there has not been any contact between the United States and the claimants, and the claimants have not complied with court orders to file status reports.

3. The United States' Motion provides evidence that the claimed points of diversion are located on National Forest System land. Claimants do not have the requisite permits or plans to have a mining operation in this area. The United States indicates that any mining claim that may have been associated with claim 41G 95748-00 has been closed since at least 1993.

Attached to the United States' Motion are Declarations from Rebecca A. Lloyd and Melissa Norris. Rebecca Lloyd is a Soil Scientist and Hydrologist who has been employed by the United States Forest Service since 2015. Melissa Norris is the program lead for the Bureau of Land Management's water right program in Montana. Both Lloyd and Norris indicate that there is no evidence that any mining claims have been used in the area since their closed dates (the latest of which is 1993). Lloyd conferred with the National Forest's lead Geologist and lead Geologic Technician, and both confirmed that no mining activity has occurred at the claimed place of use since the BLM permits were closed.

4. A Show Cause Order was issued on March 29, 2023. The Show Cause Order stated that the United States provided evidence to show that claim 41G 95748-00 has not been used for roughly 30 years. The claimants were Ordered to show cause why claim 41G 95748-00 should not be dismissed from the adjudication as abandoned. Nothing was filed by the deadline. The Show Cause Order stated that if nothing was filed by the deadline, the claim would be dismissed. Claim 41G 95748-00 should be dismissed from the adjudication.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process.

3. A long period of continuous non-use creates a presumption of abandonment. To “rebut the presumption of abandonment, there must be established some fact or condition excusing the long period of nonuse, not mere expressions of hope or desire, reflecting a ‘gleam-in-the-eye philosophy’ regarding future use of the water.” *Clark Fork River I*, 254 Mont. at 15 (citing *79 Ranch*, 204 Mont. at 433-34).

4. If a claimant fails to comply with an Order issued by the Water Court in its review of issue remarks, including an Order issued by a Water Master appointed by the Court, the Court on its own initiative may amend or dismiss the claim to conform with information in the claim file or information obtained as part of the adjudication process. Section 85-2-248(9) MCA. The information before the court indicates that claim 41G 95748-00 has not been used for the last 30 years and should be dismissed as abandoned.

RECOMMENDATIONS

1. Claim 41G 95748-00 should be dismissed from the adjudication.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the claim is identified as dismissed in the state's centralized database.

ELECTRONICALLY SIGNED AND DATED BELOW.

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G

Water Right Number: 41G 95748-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: DISMISSED

Owners: ARTHUR W SCHMIDT
917 UTAH AVE
BUTTE, MT 59701

LUCILLE K MEINECKE
DECEASED
917 UTAH AVE
BUTTE, MT 59702

Priority Date:

Type of Historical Right:

Purpose (use): MINING

Flow Rate:

Volume:

Source Name: UNNAMED TRIBUTARY OF TWO HEART CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.